

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

GARY METZGAR, et al.,

Plaintiffs,

v.

**ORDER**  
13-CV-0085-A

U.A. PLUMBERS & STEAMFITTERS  
LOCAL 22 PENSION FUND, et al.,

Defendants.

---

The above-referenced case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., for conduct of pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1). On February 4, 2014, Magistrate Judge Schroeder filed a Report and Recommendation (Dkt. No. 20) recommending that defendants' partial motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) (Dkt. No.13) be denied.

The Court has carefully reviewed the Report and Recommendation, the pleadings submitted by the parties, and, after oral argument on April 29, 2014, it is hereby

**ORDERED**, upon *de novo* review of defendants' objections pursuant to 28 U.S.C. § 636(b)(1) (Dkt. No. 20) to the Report and Recommendation, and for the reasons stated in the Report and Recommendation, defendants' partial motion to dismiss (Dkt. No. 13) is hereby denied. Defendants do not establish pursuant to Fed. R. Civ. P. 12(b)(6) that plaintiffs state no cognizable violation of 29 U.S.C. § 1054(g) in plaintiffs' first cause of action. The circumstances of plaintiffs' receipt of early-

retirement benefits before the “benefits” were changed, as alleged in plaintiffs’ complaint, will have to be developed before the parties’ dispute whether plaintiffs’ anti-cutback rule claim has merit can be meaningfully addressed. *See Alcantara et al., v. Bakery Confectionary Union and Industry International Pension Fund Pension Plan, et al.*, Nos. 12-4834-cv, 12-4839-cv, 12-4851-cv, 12-4861-cv, 12-4912-cv, slip op. at pp. 12-13 (2d Cir. May 1, 2014).

The case is recommitted to Magistrate Judge Schroeder pursuant to the terms of the Court’s prior referral order for further proceedings.

**IT IS SO ORDERED.**

Richard J. Arcara  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: May 1, 2014